

The following advisory opinion is to advise the reader of the current position of the Kentucky Department of Insurance ("Department ") on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

Kentucky Department of Insurance

Advisory Opinion 98-04

In re: Participation Requirements for Groups

RELEVANT FACTS AND STATUTES: The Department has received inquiries regarding if insurers can have participation requirements that require that a certain number of employees be non-family members.

DEPARTMENT'S POSITION: Section 1(33) of HB 315 defines small employers as "...an employer who employed an average of at least two (2) but not more than fifty (50) employees...." Section 1(34) of HB 315 defines large group as an..."employer with fifty-one (51) or more employees...." Section 2 of the HB 315 permits insurers in the small group or large group market to set certain participation requirements. None of the requirements specified permits the insurer to modify the definition of "employer" however. Therefore, if the employer has bona fide employees who are also family members, the insurer shall require the same participation requirements for employers with family members as those employers who do not employ family members. Family relationship cannot be a factor in determining participation requirements.

Any questions may be directed to D. J. Wasson, Principal Assistant to Commissioner (502) 564-6026.

George Nichols III

Commissioner

Date:12/21/98